

## **Paper A: Minutes of meeting held on 4 December 2023 - Hybrid**

### **PRESENT**

Cllr Nathan Yeowell	Chair, LGA
Cllr Michael Headley	LGA
Cllr Richard Wenham	LGA
Cllr Deirdre Costigan	LGA
Cllr Azhar Ali	LGA
Cllr Doug McMurdo	LGA
Cllr John Fuller	LGA
Cllr Eddie Reeves	LGA
David Murphy	NILGOSC
Alan Wilkinson	SPPA
Kim Linge	SPPA
Alan Wareham	DLUHC
Linda Welsh	SPLG
George Graham	SAB representative
Kevin Gerard	Technical Group representative

### **Secretariat**

Lorraine Bennett	LGPC
Joanne Donnelly	Scheme Advisory Board (SAB)
Rachel Abbey	LGPC
Becky Clough	SAB
Karl White	LGPC

### **Apologies**

Cllr Bev Craig	LGA
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## **1. INTRODUCTION FROM THE CHAIR**

The Chair, Cllr Nathan Yeowell [NY], welcomed everybody to the hybrid meeting and asked members to introduce themselves and outline their LGPS responsibilities.

Cllr John Fuller [JF], the outgoing chair, summarised the responsibility and purpose of the Committee – to allow employers a safe space to consider LGPS issues. JF wished the incoming Chair the best in his new position.

## **2. APOLOGIES**

Apologies for absence were received from Cllr Bev Craig. No declarations of interest were made – Lorraine Bennett [LB] confirmed that being a member or former member of the LGPS is not a conflict.

## **3. MINUTES**

The minutes of the previous meeting held on 22 May 2023 were agreed as a true and correct record.

## **4. MATTERS ARISING**

LB provided an update on subscriptions. Only one subscription is outstanding for 2022/23. Invoices for 2023/24 subscriptions have been sent to administering authorities.

All administering authorities have signed up to pay the voluntary subscriptions and make use of the services we offer. Getting payments can be a problem, but some of these problems arise because of limitations of the LGA finance system.

## **5. REGULATIONS UPDATE ENGLAND AND WALES**

LB presented the key points from Paper B.

### **LGPS statistics for 2022/23**

The Department for Levelling Up, Housing and Communities (DLUHC) has published statistics for the LGPS in England and Wales. These are the combined figures from the 86 administering authorities. LGPS Scotland and Northern Ireland are separate schemes. There are 11 administering authorities in Scotland and a single one in Northern Ireland.

The figures for LGPS England and Wales reflect the fact that it is one of the biggest pension schemes in Europe. Assets at the end of the 2022/23 year were £357 billion. There were 6 million scheme members, of which 2 million were active in 2022/23.

## McCloud update

LB summarised the McCloud judgment for the benefit of new members of the Committee. All public service pension schemes were reformed in 2014/15 following the findings of the Hutton Report. The main change was a switch from final salary to career average accrual. The Government protected older members from these changes because they had less time to adjust their retirement plans. Members with the support of unions launched legal challenges in the firefighters' and judges' pension schemes. The Court of Appeal found that younger scheme members had been unlawfully discriminated against because the protections for older members did not apply to them. The Government agreed that the decision would apply across all public service schemes, not just the schemes directly involved in the cases.

The court case is known as the McCloud judgment after a member of the judges' pension scheme involved in the case. The means by which the age discrimination will be removed is known as the McCloud remedy.

The protection given to older members of the LGPS was very different from the protection awarded in other public service pension schemes. All LGPS members moved to the career average scheme on 1 April 2014. An underpin was designed to give the better of a final salary or career average pension to protected LGPS members. In the other schemes, older members stayed in the 'legacy' final salary schemes. This difference means that the remedy in the LGPS will be very different from the remedy in the other schemes.

The LGPS regulations were amended from 1 October 2023. We had hoped for a long lead-in time to allow software suppliers and administering authorities to prepare their systems, communications and processes. In the end, the final regulations were laid three weeks before they came into force.

The amended regulations extend underpin protection to younger members. Further changes were also needed to clarify how the underpin works for different members and how it feeds into survivor benefits and transfer values. The new regulations clear up some of the deficiencies of the 'old' underpin, ensuring it works consistently and fairly for all protected members.

Administering authorities have many new responsibilities to implement the McCloud remedy:

- collecting and verifying the data needed to build 'notional' final salary service for the underpin period – hours changes and service breaks

- changing the basis of new calculations to reflect members' underpin protection
- reviewing past payments and making top-up pension, death grant and transfer payments.

DLUHC has published a draft version of their prioritisation policy setting out how they recommend administering authorities prioritise the McCloud casework. They have set up a working group to consider this and other statutory guidance that will assist funds. The statutory guidance may also cover compensation, the treatment of transfer payment top-ups where the receiving scheme cannot or will not accept the extra payment and how to identify members in scope.

The criteria for protection are different under the new rules. An LGPS member may be protected if they have a previous period of public service pension scheme membership, even if that membership is kept separate. The LGA maintains a database that can help administering authorities identify individuals with previous LGPS membership. Administering authorities will need to ask members about previous membership of a different public service pension schemes to establish their protection status.

The LGA has created various resources to help administrators navigate the McCloud project. These include:

- a 90-page **technical guide for administrators**. The guide covers who is in scope of protection, how to perform certain calculations and includes lots of examples. Further instalments of the guide will be published covering transfers out and processing retrospective cases as more information becomes available.
- **areas of the member websites dedicated to the McCloud remedy** including an interactive tool, a video, FAQs and examples. The main message for LGPS members is that they do not need to do anything. If a member is protected, the underpin will apply automatically.
- **member factsheet** – to send to members who have opted out of digital communications or to hand out at in-person events.
- **Template letters** to notify members about the change to the scheme including a template to satisfy disclosure requirements. Affected members must be informed by 31 December 2023.

DLUHC will consult on further regulation changes in 2024. These will mainly cover teachers with excess service. A teacher has excess service if they have an additional teaching post as well as a full time teaching post. Remedy in the Teachers' Pension Scheme (TPS) means that the teacher will retrospectively

become eligible for membership of the LGPS for the remedy period in respect of the additional post. This will involve exchanging a significant amount of information between TPS, employers and LGPS administering authorities. There will also be a transfer of contributions.

Kevin Gerard [KG] asked how many teachers with excess service there are. TPS have estimated that there are 18,000 cases across England and Wales. LB has concerns about data quality, which means that the 18,000 estimate may not be correct.

## **Pensions dashboards**

Pensions dashboards will allow people to see information about all their pensions in one place, with the aim of encouraging pension saving and engagement. There will be a Government funded dashboard and multiple private ones. Development of pensions dashboards has already taken many years. The Government announced a reset in March 2023 – the connection deadlines for schemes will be later than originally planned. All schemes must connect to dashboards, but will have more time to do so.

Legislation setting out the staging timetable has been removed and replaced with a backstop date. The backstop date of 31 October 2026 is the latest date that all schemes in scope must connect. The LGA team meets regularly with DWP and MaPS and they have informally shared the proposed connection date for public service pension schemes.

## **Abolishing the Lifetime Allowance**

There are currently two restrictions on the amount of tax-free pension savings an individual can have. The annual allowance limits the annual increase in pension savings before the member has to pay extra tax. The lifetime allowance limits the total amount of pension savings in all UK registered pension schemes.

The Government has announced that it will abolish the lifetime allowance from April 2024. The lifetime allowance is still currently in operation, but no one will incur a tax charge if they exceed the limit in the 2023/24 year. HMRC consulted on proposals to abolish the lifetime allowance in summer 2023. After it is abolished, there will still be a limit on the amount of tax-free cash that a member can take from their pension.

The LGA raised a number of concerns in their response to the consultation:

- there is not enough time to bring in the new legislation before April 2024

- the limit on the amount of tax-free cash should increase with inflation rather than being fixed
- there will be two different lump sum limits which will be confusing for members
- individuals will need a record of the lump sums they have received in the past, even though there was no requirement to track this under the regime in force since 2006.

A draft finance bill has been published. There is little time to read and understand the 100 pages of the Bill that relate to the abolition of the lifetime allowance and update systems before the changes take effect next April. HMRC are likely to issue guidance that is easier to follow.

### **New resources for employers**

The LGA team has produced bite-size training for employers on the ill health retirement process. Ill health retirement is the most common topic that LGPS members complain about to the Pensions Ombudsman and this training is designed to improve employer understanding.

The LGA has published FAQs on strike action and its effect on an LGPS pension for members and employers. Unions were voting on possible strike action earlier in 2023.

## **6. SAB UPDATE [E&W]**

Joanne Donnelly [JD] gave a brief overview of the Scheme Advisory Board (SAB). The Board considers the interests of the Scheme and its members when making decisions and recommendations. Six employee representatives and six employer representatives have the power to vote, but a vote is very rare as the Board almost always reaches a consensus. The Board is supported by actuarial and legal advisers and a non-voting member from the Pensions and Lifetime Savings Association. The requirement for public sector schemes to have a statutory board was introduced in the Public Service Pensions Act 2013.

All public sector pension scheme advisory boards advise their relevant Secretary of State. The LGPS Board has an additional role of advising administering authorities as well.

The results of the last valuation on 31 March 2022 were used to set employer contribution rates in the LGPS for the three-year period from April 2023 to March 2026. Changes to the Scheme rules made in 2020 allow mid-cycle reviews of employer contribution rates in certain circumstances. The expectation was that mid-cycle contribution reviews would only be undertaken for charities and admitted

bodies, it was not anticipated that they would be used for councils. The fact that many funds are in surplus combined with the severe funding pressures faced by councils has led to calls by some advisers for the employer contribution rates paid by councils to be reviewed mid-cycle. Some advisers are recommending giving employers a contribution discount for the remainder of this valuation cycle.

SAB will discuss this issue at their meeting which follows this one. They plan to issue advice for funds on how best to navigate the current situation. They recognise that different funds will adopt different approaches. The view expressed by DLUHC is that these flexibilities should not be used to assist councils in financial difficulties because councils have cast-iron covenants as tax raising bodies. Councils also must remain LGPS employers – they do not have the option to withdraw from the Scheme. Even if a council issues a section 114 notice, they must continue to pay employer contributions at the rate agreed with the scheme actuary.

NY noted that housing associations have requested mid-cycle contribution reviews. Each administering authority should have a policy on when it will undertake such a review. DLUHC does not expect that this policy will include reviewing the employer contribution rate as a result of changes in the wider economy and financial markets. Reviews were intended to be used when there was a change to the position of an individual employer.

Alan Wilkinson [AW] asked what the funding levels in the LGPS in England and Wales are. JD confirmed that the Scheme as a whole was 107 per cent funded, but there are variations across administering authorities. The recent increased funding level since the valuation date is due to reductions in the value of liabilities, not an increase in the value of the Scheme's assets.

George Graham [GG] noted that some funds could be 150 percent funded on a theoretical roll forward basis. Most funding strategy statements say that the administering authority will not review employer contribution rates in response to market movements. JD confirmed that some administering authorities have learned hard lessons from giving employers a contribution holiday in the past. The valuation of the LGPS in Scotland happens a year later. The position in Scotland is very different from that in England and Wales. Some Scottish funds have been in surplus for a number of years. For many English and Welsh funds, this is the first time this has happened.

JD presented the key points from paper C.

### **Cost management process**

HM Treasury (HMT) conducts a valuation of public service pension schemes every four years. The cost management process was introduced in 2013 to measure how employer costs have changed against a baseline amount. This process is used to set the employer contribution rate in the unfunded schemes. The LGPS is valued as part of this process. The results could affect member contributions or benefits, but they do not directly affect LGPS employer contributions.

Initially, costs in all public sector schemes breached the cost floor at the 2016 valuation due to pay increases being lower than expected and a slowed increase in longevity. However, the cost of the McCloud remedy increased scheme costs so that there was no cost floor breach, and no scheme changes were necessary.

The results of the 2016 valuations showed that the cost control mechanism was not working as expected. Legislative changes in 2021 widened the cost corridor from 2 per cent to 3 per cent and introduced an economic check. If the initial valuation results suggest that there has been a breach, there will be further check to see if the breach would still have occurred if other economic factors were taken into account.

HMT issued Directions in August 2023 covering the assumptions to use in the 2020 valuations. GAD is currently working on these valuations. Initial results suggest that scheme costs are lower than expected, but the economic check means that no scheme changes will be triggered.

Employer contribution rates in the Teachers' Pension Scheme are set to increase by five per cent as a result of the increase in the SCAPE rate. This increased cost will be funded for local authority schools and academies but not for further or higher education establishments.

David Murphy [DM] pointed out that the employer contribution rates in other public service pension schemes are much higher than they are in the LGPS. He suggested sharing information about the higher contribution rates with LGPS employers to allow them to make a comparison. The Committee will consider this question at the next meeting once the employer contribution rates in the other schemes have been set. High employer contribution rates could lead to a review of public service pension provision in the future.

There is a separate cost management process in the LGPS in England and Wales. SAB sets the assumptions it uses but has regard to the assumptions used in the HMT process. It can use a different discount rate. As a funded scheme, Gross Domestic Product may not be the best measure of expected investment performance. The Board will discuss those assumptions when they meet later.



Local authorities are facing significant issues in getting their accounts audited, which is delaying the audit of pension fund accounts in England. The SAB made a recommendation to the previous Minister that pension fund accounts should be separate from council accounts. The Levelling Up, Housing and Communities select committee recently made the same recommendation in their first report on financial reporting and audit in local authorities. Primary legislation would be needed to achieve this.

NY asked for an update on the pooling consultation. JD confirmed that the Government response to the consultation did not include any changes to the original proposals. Government policy is for there to be fewer pools in future, but is also pushing for faster progress to pool assets. There has been some resistance from funds who are concerned about the cost of pooling illiquid assets in a pool that may not exist in the future.

### **Sharia compliance**

SAB has received reports from funds about increasing numbers of employees of Muslim faith opting out of the LGPS. Some believe that the Scheme is not Sharia compliant because it is funded. Claims of direct discrimination are possible if employers are not providing a scheme that all groups can pay into. SAB sought legal advice on this issue on behalf of the whole scheme to reduce costs compared with each fund obtaining its own advice. Counsel recommended seeking advice on this issue from an Islamic finance scholar. SAB procured that advice and has now received a final report from the Islamic scholar.

The advice was that the LGPS, as a public sector scheme and a defined benefit scheme, is compliant with Sharia law principles. Pensions are considered deferred pay – LGPS employers set aside pay for members to receive later. The scholar's view is that such an arrangement is consistent with Islamic beliefs.

SAB will refer the issue back to legal counsel. The Islamic scholar made some recommendations about LGPS investments that would constitute a significant change to the LGPS, should they be taken forwards. There could also be implications for the Scheme in relation to members with different belief systems, not just followers of Islam.

## **7. REGULATION UPDATE SCOTLAND**

The Committee noted the key points from paper D, which was presented by Kimberly Linge [KL].

### **CPI revaluation regulations**

In line with DLUHC, SPPA are changing the revaluation date that applies in the LGPS. Progress on laying the regulations has been delayed due to work on McCloud.

### **McCloud remedy regulations**

The LGPS (Scotland) regulation amendments to introduce the McCloud remedy are in force from 1 October 2023. SPPA recognises the large amount of work for pension administrators that starts now to implement the remedy.

### **Exit credits**

The LGPS (Scotland) regulations will be amended to introduce more flexibility in working out an exit credit to be paid to an exiting employer. The changes are in line with those made to the LGPS in England and Wales in 2020. SPPA is hopeful that the changes can be made in Spring 2024, but there are many SSIs outstanding due to the time and resources that have been devoted to McCloud.

### **McCloud guidance**

SPPA has joined the DLUHC working group that is developing statutory guidance on McCloud. They have asked administering authorities to suspend transfers for protected members until new guidance is in force.

### **Surpluses**

As mentioned earlier at this meeting, many Scottish funds have been in surplus for some years. Strathclyde Pension Fund has reduced employer contribution rates as a result of a surplus that is due to investment returns.

## **8. REGULATIONS UPDATE NORTHERN IRELAND**

The Committee noted the key points from paper D, which was presented by DM.

LGPS regulations for Northern Ireland are made by the Department of Communities. Most of the time they follow changes made to the LGPS in England and Wales, but they have been first to make some changes. The LGPS in Northern Ireland does have a surplus that means they have been able to reduce employer contribution rates. Some employers have exited the Scheme with an exit payment because of the current financial position.

### **LGPS regulations**

The Northern Ireland LGPS Regulations were amended to implement the McCloud remedy three days before the deadline on 1 October 2023.

## **Economic Activity of Public Bodies (Overseas Matters) Bill**

Northern Ireland was covered by this Bill, which came as a surprise because they had not been included in earlier versions. DM confirmed that LGPS Northern Ireland is supportive of the LGA position on these proposals and thanked JD for appearing in front of the relevant Select Committee.

### **9. TECHNICAL GROUP UPDATE**

Kevin Gerard [KG] presented the key points from Paper F.

The McCloud remedy will be a nightmare for LGPS administrators. Regional groups provide an update at Technical Group and the group aims to achieve a consistent application of the remedy across the country. The challenges are twofold – with funds having to change new calculations and revisit past cases. They are currently awaiting further guidance on how to deal with retrospective cases.

Technical Group is hopeful for changes to the Scheme rules to be included in the next set of amendment regulations:

- removal of the upper age limit of age 75 for death grants – a legal challenge to the current rules is likely
- removal of the requirement to pay a refund within five years.

Administering authorities have experienced 18 months of poor performance from Prudential, the AVC provider for the majority of funds. There have been recent improvements and they will decide at the next Technical Group meeting whether the AVC subgroup should continue to meet.

The group is keen to ensure that everyone is measuring KPIs included in the annual report consistently. KPIs in the annual report will cover processes, but also phone calls and other communications.

### **10. TRAINING AND CONFERENCE UPDATE**

Karl White [KW] presented the key points from Paper G.

The annual Fundamentals training aimed at pension committee and local pension board members is underway. We are delivering the three day course in London, Manchester and online. Each day covers a different area, with Day two covering investment. Feedback from the events will be used to see if we can make

improvements. We appreciate the support from actuarial firms, the SAB, DLUHC and investment advisers that allows us to deliver this training.

The Annual Conference will be held in York in January 2024. In-person places are sold out, but there are still spaces to attend online.

We have published our training programme for 2024. Online events are proving most popular. We have encouraged regional pensions officer groups to commission local in-person training. The training plan includes a one-day retirement course, but we are considering extending this to a two-day course because of the complexity of the subject.

The team will be delivering webinars on McCloud in December and will consider what other McCloud training is needed.

We have been tasked to create a specific LGPS qualification. We have recruited to a new post on the team to help take this forward and help with the existing training programme. We are planning to:

- work with Barnett Waddingham to promote and deliver a level 2 generic pensions qualification – a pilot will start in April 2024
- work with the Pensions Management Institute to develop a level 3 qualification that is specific to the LGPS – we are aiming to roll this out from April 2025.

## **11. ANY OTHER BUSINESS**

None

## **12. DATES OF NEXT MEETINGS**

Future meetings will be held on 11 March 2024, 22 July 2024 and 25 November 2024.